

**ANDOVER CONSERVATION COMMISSION MEETING MINUTES**  
**APRIL 16, 2013**

Town of Andover  
36 Bartlet Street  
3<sup>rd</sup> Floor Conference Room  
7:45pm

**Conservation Members in Attendance:**

Chairman Donald Cooper, Commissioner Alix Driscoll, Commissioner Jon Honea, Commissioner Floyd Greenwood, Commissioner Kevin Porter and Commissioner Fran Fink. Commissioner absent was Vice Chairman Michael Walsh. Staff members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

**SCHEDULED ITEMS:**

**14 Dundee Park**

*Staff Recommendation: Withdraw without prejudice.*

Public Meeting on the Request for Determination of Applicability filed by Denis D'Amore to determine if the proposed excavation of soil, and replacement of existing sewer at 14 Dundee Park is subject to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40.

Agent Cleary presented this to the Commission. This was continued from March 21, 2013 due to the ratification of an Emergency Certification. There were no reportable contaminants found, no further work needs to be done on site and a withdrawal without prejudice has been requested.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to withdraw without prejudice; it was seconded by Commissioner Greenwood and unanimously approved.

**222 North Main Street**

**Present in Interest: Kenneth Daher and Mary Koontz**

*Staff Recommendation: Approve with stone maintenance to be field approved by staff.*

Public Hearing on a Request for Determination of Applicability filed by Kenneth Daher to determine if the proposed replacement of existing porches within the same footprint; installation of a cement skirt; and use of crushed stone in driveway and around dwelling at 222 North Main Street is subject to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40.

Mr. Douglas presented this to the Commission. The project appears to be within the 100 year Flood Plain. The proponent had originally intended to install pavers, however after receiving a notice from the Historical Board, he must rebuild the porches exactly as they are now which means less digging. Pavers would have required a full excavation. The proposal for the cement skirt is to repoint the foundation. This requires no digging and likely does not require a permit from the Conservation Commission. The existing gravel has been shifted by plowing and will require more stone to refurbish. This is more of a driveway maintenance project. The proponent does not intend to pave any portion of the property.

Commissioner Fink requested the concrete blocks be removed. She also was concerned with work being done in the flood plain and stabilizing the erosion happening on the site.

Mr. Daher stated that the property has been neglected for a long period of time and he is only looking to restore the property to its existing condition before it became so neglected.

Staff agreed that the proponent be allowed to keep the graveled areas as they have been in existence for a number of years on this property.

Commissioner Porter is concerned that when the property floods, it is catastrophic and no amount of work or stabilization will prevent the flooding.

Chairman Cooper also stated his concern that limits be put on the amount of gravel brought into the property. Mr. Douglas will oversee the installation of the gravel. Commissioner Greenwood suggested limiting the height or cubic yards to be brought into the property.

Chairman Cooper asked for a Motion. Commissioner Driscoll made a Motion to approve with staff to oversee the project, the mean elevation not to increase and loam and seed what is not graveled. The Motion was seconded by Commissioner Greenwood and unanimously approved.

## **12 Foster's Pond Road**

### **Present in Interest: Allen Barber**

*Staff Recommendation: Find Application subject to the By-Law, Pos.5 and associates fees.*

*Continue to a date uncertain.*

Public Hearing on a Notice of Intent filed by Allen and Virginia Barber to determine if the proposed demolition and replacement of existing garage, removal and replacement of pavement for parking at 12 Foster's Pond Road is subject to the Massachusetts Wetlands Protection Act, M.G.L., Chapter 13, sec. 40.

Agent Cleary presented this to the Commission. The filing is under the WPA only, however based on staff notes, should be subject to the By-Law which requires an additional \$250.00 filing fee be submitted. Waivers are requested for engineered plan requirements. The Applicant's submitted plan, which is a "marked up" As-Built Plan, is missing the 25 foot offset, 50 foot no-build and 100 foot buffer zone; existing and proposed topographical contours, delineation of

resource areas, and location of sediment control. The proposed generator, which will be placed on crushed stone, is 45 feet from the resource area and approvable. Approximately 1000 square feet of pavement will be removed and no trees are to be cut as a result of this project. The Applicant does not intend to install erosion control as the proposed work is across the street from the resource area. According to the plan submitted, the proposed driveway, pavement and corner of the garage are all within 100 foot buffer.

Commissioner Honea asked of the demolition work of the existing garage which is within the 100 foot buffer would trigger the by-law. Yes, both the demolition and removing of pavement is subject to the By-Law.

Mr. Barber stated that the garage will be outside the 100 foot buffer, it was just not reflected on the plan submitted. He also agreed to pay the additional By-Law fees if appropriate and will submit a revised plan.

Agent Cleary agreed to provide Mr. Barber with the missing items from the submitted plan. The Commission discussed with the Applicant submitted an engineered plan.

Chairman Cooper asked for a Motion. Commissioner Porter made a Motion to continue to a date uncertain; it was seconded by Commissioner Honea and unanimously approved.

### **63 Chestnut Street**

#### **Present in Interest: Jane Kobelski**

*Staff Recommendation: Find project is 100 feet from the resource area and Approve.*

Public Hearing on the Request for Determination of Applicability filed by Brian and Jane Kobelski to determine if the proposed installation of an inground pool at 63 Chestnut Street is subject to the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40.

Mr. Douglas presented this to the Commission. Large, flat grassed backyard roughly 200 feet from the back of the closest building from the river. Mr. Douglas provided photos to the Commission of the yard and stream. The pool will be outside 100 feet. This stream has been reviewed by the Commission and is a perennial stream, Rogers Brook. This is a riverfront area project. Grade will not be impacted and staff recommends the RDA filing instead of the NOI filing. This project is a Backyard Project which consists of conversion of a grassed area to a pool a long way from the resource area. There is no work within the first 100 feet of the riverfront. The pool and pad to be installed in the second 100 feet.

Commissioner Fink visited the property and found the land drops off 1 to 2 feet after the addition where the pool and patio are proposed. She also found a white pcvb pipe coming out of the ground behind the house.

Jane Kobelski stated that the runoff goes into crushed stone and then drains out the pipe.

However, they have never seen water coming from the pipe. Ms. Kobelski specifically asked

about fill being brought in for the pool and she was informed that no fill would be brought in for the pool and patio.

Chairman Cooper asked for a Motion. Commissioner Honea made a Motion to Approve with no fill beyond the lip of the pad for the pool and not exceeding 2 feet maximum, it was seconded by Commissioner Driscoll and unanimously approved.

## **6 Prospect Road**

**Present in Interest: Bill MacLeod, Doug Ahern**

*Staff Recommendation: Continue and schedule a site visit.*

Public Hearing on a Notice of Intent filed by Jeffco, Inc., under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40 and/or the Andover Wetlands Protection By-Law, Article XIV, for proposed demolition of an existing dwelling and construction of a new, single family dwelling.

Agent Cleary presented this to the Commission. The filing is under the WPA and By-Law for the demolition of an existing structure and construction of a new dwelling. The entire lot is within the 100 foot buffer zone. Waivers are requested for not meeting the 50 foot no-build and 25 foot no-disturb. The 25 foot non-disturb markers are not depicted on the 25 foot non-disturb line. Staff is not in agreement with flagging done on site meaning that setbacks could be closer to the BVW than what is depicted on the plan. A foundation drain encroaches into the 25 foot non-disturb.

Mr. MacLeod presented the project to the Commission. ZBA has issued a Special Permit to demolish the existing house and construct the new house. Haybales are placed at the edge of existing lawn. The new house will be raised to install a cellar drain to allow water under the house to go through the foundation and drain into the wetland. The new house is as close to the street as possible and of reasonable size. Lawn area will not be expanded.

Commissioner Driscoll stated that the Historical Commission may have a problem with the existing dwelling being torn down.

Doug Ahearn went before the Historical Preservation Committee informally and they have made recommendations and agree that the house needs to be torn down. Their recommendations will be presented to the ZBA at the May meeting.

Commissioner Fink suggested a crawl space instead of a basement so that the high water table would not be a problem and the cellar drain could be removed. The cellar drain only functions to not allow the groundwater to come up into the cellar. She also noted the debris in the wetland needs to be removed. She also suggested there may be a vernal pool beyond the flagging extending behind the lots in that area.

Site visit scheduled for April 21, 2013 at 8:00am.

Chairman Cooper asked for a Motion. Commissioner Honea made a Motion to continue to April 30, 2013 at 8:15pm, it was seconded by Commissioner Driscoll and unanimously approved.

## **2 Hitchcock Farm Road**

**Present in Interest: Michael Radner and Scott Henderson**

*Staff Recommendation: Continue for site visit and require redelineation.*

Public Hearing on a Notice of Intent filed by Karim Berty under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40 and/or the Andover Wetlands Protection By-Law, Article XIV, for proposed installation of an inground pool, several patios, cabana and expansion of lawn area with retaining walls.

Agent Cleary presented this to the Commission. The filing is under the WPA only as the dwelling was constructed in 1989. No waivers have been requested for the following:

1. Inability to meet 35 foot setback for pool;
2. Inability to meet 30 foot setback for driveway;
3. Submittal of Natural Resource Conservation Soil Map depicting the project area;
4. 25 foot non-disturb not being met due to proposed work; and
5. Distances from proposed work to resource area not depicted on plan.

Staff does not agree with flagging, as many flags were in standing water. A new delineation will be required. If the BVW land is not correct, the proposed work (patio, pool, driveway extension, landscaped terrace, cabana, decks, retaining walls, etc.) will be even closer. A rain garden and plantings are being proposed as mitigation for the extensive tree line being cleared for more lawn area.

Michael Radner presented the project to the Commission. Scott Henderson presented the mitigation of the project. The soils are classified as C&D soils. There is a high water table on this site. The rain garden will capture runoff from the pool deck as well as the additional decks proposed. The mitigation and proposed work will cause a minimal increase in runoff. The rain garden will act like the wetland as storage.

Commissioner Fink questioned the increase in pavement along the wetland on a site that has a lot of existing pavement. She requested soils testing for the rain garden and infiltration. She also questioned the filing under the WPA only.

After site visit staff will work with Engineer to determine which waivers are needed. Site visit scheduled for April 21, 2013 at 8:30am.

Chairman Cooper asked for a Motion. Commissioner Honea made a Motion to continue to April 30, 2013 at 8:15pm, it was seconded by Commissioner Porter and unanimously approved.

### **81 Bellevue Road**

**Present in Interest: Andrew Caffrey and Gary Litchfield**

*Staff Recommendation: Continue.*

Public Hearing on a Notice of Intent filed by Gary Litchfield, C&L Homes under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40 and/or the Andover Wetlands Protection By-Law, Article XIV, for proposed construction of a single family dwelling.

Agent Cleary presented this to the Commission. The filing is under the WPA and By-Law. The site is located within the Haggetts Pond Watershed Protection Overlay District and does not meet any of the setback requirements. Work includes demolition of an existing structure and construction of a new dwelling. Staff is not in agreement with the wetland line due to historic disturbance. No waivers have been requested for distances from proposed work to resource area; 75 foot no-build, 55 feet for patio and 50 foot no-disturb. There is no certification by a design professional that the proposed work does or does not comply with the setbacks.

Attorney Andrew Caffrey presented the project to the Commission. A large 1 acre lot with an existing house which will be torn down. The house as proposed is at the 50 foot setback from the wetland. The patio will be within 50 feet and Applicant is willing to use pervious pavers.

Commissioner Fink asked if the septic plan has been approved. She also inquired as to the water table and soils testing for the lot. There will be a 2 foot separation from the water table. Commissioner Fink also asked if they would be mowing within the 25 foot edge along the wetland. Attorney Caffrey stated the Applicant is not willing to give up any existing lawn area.

After the redelineation, the Commission will schedule a site visit.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to continue to May 21, 2013 at 8:15pm, it was seconded by Commissioner Honea and unanimously approved.

### **174 Holt Road**

**Present in Interest: Bill MacLeod, Mary A. Marshall, Ken St. Pierre and Cecile Masse**

*Staff Recommendation: Continue.*

Public Hearing on a Notice of Intent filed by Mary A. Marshall under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40 and/or the Andover Wetlands Protection By-Law, Article IV, for proposed demolition of an existing deck and porch and construction of an addition to a single family dwelling.

Agent Cleary presented this to the Commission. The filing is under the WPA only for a proposed addition. There is existing lawn beyond the wetland flagging and staff is not in agreement with the flagging. The flagging should be moved 4 to 6 feet upgradient which then places a slight corner of the addition into the 50 foot no-build. A waiver will have to be requested for the encroachment and for nonsubmittal of Natural Resources Conservation Soil Map. Non-disturb bounds should be placed on the rear erosion control line to prevent future encroachment into the resource area which would provide a 10 foot buffer to the wetland line.

Mr. MacLeod presented the project to the Commission, stating that the Applicant does not wish to “give up” any backyard as the lawn has historically been beyond the wetland line. Mary Ann Marshall stated that the backyard has been in the existing state since she purchased the property in 1994. She is concerned how a naturalized area would look. Chairman Cooper advised that a buffer to the wetland provides better quality water running into the wetland. DEP will most likely not agree to allow the lawn to remain at it exists and Chairman Cooper suggested a compromised non-disturb zone in return for an approval that does not meet our setbacks.

Commissioner Honea inquired as to how long the pod would be on the property. It will remain only during construction for storage of household items and then be removed.

The 2 items to be answered are: (1) Whose wetland line is correct; and (2) Impact of buffer zone compromise.

Chairman Cooper asked for a Motion. Commissioner Honea made a Motion to continue to April 30, 2013 at 8:15pm for confirmation of wetland line and applicant to consider a non-disturb area, it was seconded by Commissioner Driscoll and unanimously approved.

## **15 County Road**

**Present in Interest: Bill MacLeod and Gerry Welch**

*Staff Recommendation: Continue to April 30, 2013.*

Public Hearing on a Notice of Intent filed by Dennis and Susan Pineault under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40 and/or Andover Wetlands Protection By-Law, Article XIV, for proposed construction of a driveway on the northerly side of the existing dwelling.

Agent Cleary presented this to the Commission. The filing is under the WPA only. The proposed construction is in the outer 100 feet of the Riverfront Area and comports to permittable alteration standards per the regulations. A crushed stone infiltration trench is proposed for recharge. Under the WPA, the alteration comports to permittable standards per 210 CMR 10.58 (4)(d) 1.

Mr. MacLeod presented the project to the Commission. The roadway approved under a separate Order of Conditions will go through their current driveway which prompted the need for the 2 parking spots. Discussion followed regarding the piece meal filing of the projects for County Road and alteration within the Riverfront Area. Staff to have DEP clarify calculations within the Riverfront Area for lots recorded prior to August 7, 1996 and report back to the Commission during April 30, 2013 meeting.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to close the public hearing; it was seconded by Commissioner Honea and unanimously approved.

#### **ACTION ITEMS:**

##### **Doherty Middle School/50 Bartlet Street**

*Staff Recommendation: Issue Order of Conditions*

Issuance of an Order of Conditions. Conditions to be added:  
Cleaning out catch basins within Barlet Street once construction finished;  
Maintain porous pavement per DEP regulations; and  
Pretreatment for rain garden areas and bioretention areas.

Commissioner Honea made a Motion to Issue the Order of Conditions as amended; it was seconded by Commissioner Greenwood and unanimously approved.

#### **CONSENT AGENDA:**

##### **Minutes**

Approval of Minutes from April 2, 2013 Meeting.

Commissioner Porter made a Motion to Approve; it was seconded by Commissioner Driscoll and unanimously approved.

#### **DISCUSSION ITEMS WHICH MAY REQUIRE A VOTE:**

##### **Senior Community Residential Overlay District**



Vote to support Town Warrant Article regarding Senior Residential Community Overlay District by Paul Materazzo.

Commissioner Porter made a Motion that Conservation Commission recommends approval of Town Meeting Articles 26 & 27 relating to the Senior Residential Community Overlay District. Endorsement of these articles is consistent with Town's Open Space Plan and would provide for the preservation of open spaces and the protection of the Merrimack River shoreline as a natural pedestrian amenity, that may otherwise not be afforded under conventional zoning. For the sole purpose of providing additional regulatory tools to Town that would allow for the protection of sensitive land areas and open space, the Conservation Commission recommends Town Meeting approval. The Motion was seconded by Commissioner Driscoll and unanimously approved.

### **SunGen – 1350 South Street**

#### **Present in Interest: Mark Johnson, Carol McGravey and Steve Boynton**

Discussion of Letter of Intent and test results. The abutters in Tewksbury appealed and part of the resolution was that they would name the trail. The test results were all nondetects per Steve. There was a concern if the land was immediately to be conveyed to the Conservation Commission. The stepped piece and land management parcel will be conveyed to the Conservation Commission upon recording of the deed. The land will be conveyed within the next 60 days when the deed is recorded.

Commissioner Greenwood made a Motion to authorize the Director of Conservation to execute the letter of record and forward to Dave Paulson of Natural Heritage indicating the Town's acceptance of the land subject to the conditions stated. The Motion was seconded by Commissioner Porter and unanimously approved.

### **Article 59 – Watershed Overlay Protection District Warrant Article**

Vote to support Watershed Overlay Protection District Warrant Article which will generate maps to clarify the overlay districts for the citizens.

Commissioner Honea made a Motion to support Article 59- Watershed Overlay Protection District, it was seconded by Commissioner Greenwood and approved with Commissioner Fink abstaining.

### **Article 60 – Stream Gauging System Warrant Article**

Vote to support Stream Gauging System Warrant Article brought forward by the residents of Balmoral.

Tabled to April 30, 2013 meeting.

### **Reichhold Property**

Vote to approve purchase of third Reichhold Property.

Commissioner Driscoll moved to appropriate the sum of \$\_\_\_\_\_ in addition to the funds appropriated by vote on Article 23 of the 2002 Annual Town Meeting for the purpose of acquiring a portion of the Reichhold property for conservation, open space and passive recreation located at 77 Lowell Junction Road, and shown as “Parcel 1, 42,058.38± sq. feet, 0.97± acres, Conservation” and “Parcel 2, 124,869.92± sq. feet, 2.87± acres, Conservation” on the Plan of Land entitled “Proposed Division Plan of Land in Andover, Massachusetts, Essex County, Prepared for Town of Andover,” Prepared by DGT Survey Group – North Shore, LLC, Newburyport, MA, which plan is on file with the Town Clerk’s Office and to authorize the Conservation Commission and the Board of Selectmen on behalf of the Town and/or Conservation Commission to: (i) acquire said land and any portion thereof, by gift, purchase (including but not limited to purchase using an appropriation made at the 2002 Annual Town Meeting, Warrant Article 23) or eminent domain and that to raise this appropriation, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said sum under and pursuant to Chapter 44, Section 7, Clause (3) and/or Chapter 44, Section 8C of the General Laws, or any other enabling authority, and to issue bonds or notes of the Town therefore, or to take any other action related thereto; (ii) file on behalf of the Town any and all applications deemed necessary to seek reimbursement or grants under the Local Acquisitions for Natural Diversity (LAND) Grant Program, Chapter 132A, Section 11, and/or other reimbursement or grant programs in any way connected with the scope of this article and enter into agreements and execute any and all instruments as may be necessary on behalf of the Town to affect said purchase or grant; (iii) convey said land and buildings thereon to the Town under the provisions of Chapter 40, Sections 8c, and as it may thereafter be amended and other Massachusetts statutes relating to Conservation to be managed and controlled by the Conservation Commission. The Motion was seconded by Commissioner Porter and unanimously approved.

Commissioner Driscoll moved to appropriate the sum of \$550,000 in addition to the funds appropriated by vote on Article 12 of the 2001 Annual Town Meeting for the purpose of expending an amount not to exceed \$\_\_\_\_\_ for the repair and/or demolition of the buildings located on the property described in this Article, and expending an amount not to exceed \$\_\_\_\_\_ for acquiring portion of the Reichhold property for recreation purposes located at 77 Lowell Junction Road shown as “500,391.51 Sq. Feet, 11.49± Acres, Town Land” on Plan of Land entitled “Proposed Division of Plan of Land in Andover, Massachusetts, Essex County, Prepared for Town of Andover,” Prepared by DGT Survey Group – North Shore, LLC, Newburyport, MA”, which plan is on file with the Town Clerk’s Office and to authorize the Board of Selectmen on behalf of the Town, acting on its own or as the Recreation Commission, to: (i) acquire land and buildings thereon, or any portion thereof, by gift, purchase (including but not limited to purchase using an appropriation made at the 2001 Annual Town Meeting, Warrant Article 12) or eminent domain and that to raise this appropriation, the Treasurer, with the approval of the Board of Selectmen, is authorized to borrow said sum under and pursuant to Chapter 44, Section 7, Clause (3) and/or Chapter 44, Section 8C of the General Laws, or any other enabling authority, and to issue bonds or notes of the Town therefore, or take any other

action related thereto; (ii) seek reimbursement or grants for the purpose of the land described above and designated as "Town Land" in the amount of the value of the land purchased, not to exceed \$\_\_\_\_\_ under the Parkland Acquisitions and Renovations for Communities (PARC) Program (301 CMR 5.00) and/or any others in any way connected with the scope of the Article and enter into all agreements and execute any and all instruments as may be necessary on behalf of the Town to affect said acquisition and said reimbursement and grants; (iii) convey said land and buildings thereon, or any portion thereof, to the Town under the provisions of Chapter 45, Sections 14, and as it may be hereafter amended and other Massachusetts statutes relating to recreation, to be managed and controlled by the Board of Selectmen acting as the Recreation Commission; (iv) once acquired, to lease said land and buildings, or any portion thereof, to a third party or third parties upon terms and conditions deemed appropriate by the Board of Selectmen; (v) enter into a license or lease agreement to manage the property, or any portion thereof, consistent with the Urban Self-Help Act grant program for maintenance, etc. The Motion was seconded by Commissioner Porter and unanimously approved.

**The next meeting will be held April 30, 2013 at 8:00pm.**

**The meeting was adjourned at 10:35pm by Motion of Commissioner Driscoll, seconded by Commissioner Honea and unanimously approved.**

**Respectfully submitted by,**

**Lynn Viselli,  
Recording Secretary**